



FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON

~~SECRET~~ FILE COPY ORIGINAL

NA 143

Rm ~~887~~

RECEIVED

MAY 18 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY


92-265

1800D4
8010-JRC
CN9301469

As you discussed in your letter, Section 19 of the 1992 Cable Act adds new Section 628 to the Communications Act of 1934, as amended, to prohibit unfair or discriminatory practices in the sale of video programming. The expressed intent of this provision is to foster the development of competition to cable systems by increasing other multichannel video programming distributors' access to programming. In our First Report and Order in MM Docket No. 92-265, adopted April 1, 1993, and released April 30, 1993, the Commission adopted implementing regulations for Section 19. In so doing, the Commission endeavored to follow the plain language of the statute, as informed by the legislative history, and to effectuate its reading of Congressional intent.

result in harm. The Commission also concludes, however, that the plain language of the statute requires complaints filed pursuant to the general prohibitions of Section 628(b) regarding unspecified unfair practices must demonstrate that an alleged violation had the purpose or effect of hindering significantly or preventing the complainant from providing programming to subscribers or consumers.

In addition, the First Report and Order adopts a streamlined complaint process. The Commission's rules will encourage programmers to provide relevant information to distributors before a complaint is filed with the Commission. In the event that a programmer declines to provide such information, it will be sufficient for a distributor to submit a sworn complaint alleging, based upon information and belief, that an impermissible



Congress of the United States
Washington, DC 20515

March 23, 1993

The Honorable James H. Quello
Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: MM Docket No. 92-265

Dear Chairman Quello:

We are writing to express our views concerning the Notice of Proposed Rulemaking regarding the program access provision (section 19) of the Cable Television Consumer Protection and Competition Act of 1992. We would like to thank you and the Commission staff for your cooperation in arranging meetings between members of our staffs and the Commission's staff to discuss in detail the Commission's implementation of that provision. This letter is intended to highlight certain concerns that were raised in those meetings.

In crafting the Cable Act, Congress recognized the unfair

PRB
92-235

PV
JHQ

1469

The Honorable James H. Quello

Page 2

additional showing of harm. After a cable competitor establishes a prima facie case, the burden of proof shifts to the vertically integrated programmer or cable operator who is alleged to be in violation.

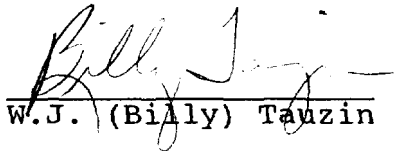
The language of section 19 does not permit any other method of analysis of price discrimination. Nor does it permit any

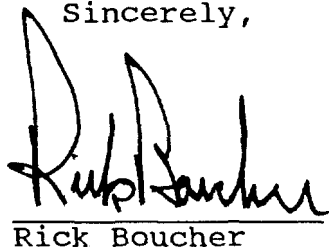
The Honorable James H. Quello

Page 3

We all want competition to thrive in the video programming marketplace. Issuing strong access to programming regulations will be the single most important action the Commission can take to foster that competition. We urge you to fulfill the goals of the statute when promulgating the section 19 regulations.

Sincerely,

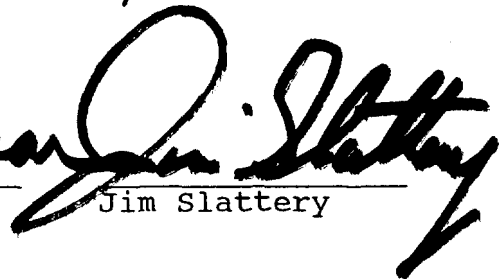

W.J. (Billy) Tauzin


Rick Boucher


Jim Cooper


Ralph M. Hall


Mike Synar


Jim Slattery

cc: The Honorable Andrew C. Barrett
The Honorable Ervin S. Duggan